IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

     Plaintiff-Respondent,

vs.   Civ. No. 98-308 MV/LCS
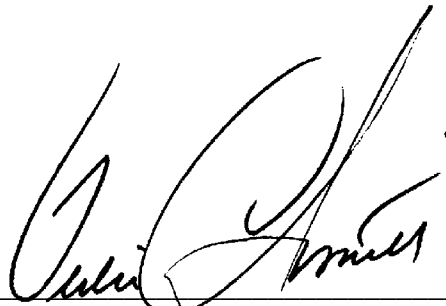   Crim. No. 95-522-001 MV

ISMAEL CALLEROS,

     Defendant-Movant.

**MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

Proposed Findings

This matter comes before the Court upon Defendant-Movant's (Calleros) Motion to

Correct Sentence (Credit for Time Served), filed March 5, 1998. Because Calleros is asking that

his federal sentence be credited for time served in custody prior to his federal sentencing, this

motion to correct sentence is considered to be a request for habeas corpus relief pursuant to 28

U.S.C. §2241. **See, e.g., United States v. Gabor**, 905 F.2d 76, 77-78 (5th Cir. 1990)(§2241 is

used for attacking the way a sentence is executed). For this Court to have jurisdiction over this

§2241 matter, the Court must have had jurisdiction over Calleros or his custodian at the time

Calleros filed the motion to correct sentence. **Id**. at 78. In other words, the motion to correct

sentence must be filed in the district court where the inmate is incarcerated. **Id**. Calleros is

incarcerated in Arizona and was in Arizona at the time he filed the motion to correct sentence.

Consequently, this Court does not have jurisdiction over the motion to correct sentence.

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Recommended Disposition

I recommend denying the Motion to Correct Sentence (Credit for Time Served) and dismissing this cause without prejudice. Timely objections to the foregoing may be made pursuant to 28 U.S.C. §636(b)(1)(C). Within ten days after a party is served with a copy of these proposed findings and recommendations that party may, pursuant to §636(b)(1)(C), file written objections to such proposed findings and recommendations. A party must file any objections within the ten day period allowed if that party wants to have appellate review of the proposed findings and recommendations. If no objections are filed, no appellate review will be allowed.

Leslie C. Smith
UNITED STATES MAGISTRATE JUDGE